

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

	)	No. CV	-PHX ROS
	)		
Plaintiff,	)		<b>ORDER SETTING</b>
	)		
vs.	)		<b>SCHEDULING CONFERENCE</b>
	)		
	)		
Defendant.	)		
	)		
_____	)		

Pursuant to the Rules of Practice of the District of Arizona ("Local Rules") governing differentiated case management, this action is designated a **standard track** case. Accordingly, **IT IS HEREBY ORDERED** that, pursuant to Rule 16, Fed.R.Civ.P., a Scheduling Conference is set for\_\_\_\_\_ at the Sandra Day O'Connor U.S. Courthouse, 401 West Washington, 6<sup>th</sup> floor, Phoenix, Arizona. **All counsel to this action must advise the Court three days prior to this Conference if they plan to participate by telephone.**

Counsel and the parties are directed to Rule 16 of the Fed.R. Civ.P. for the objectives of this conference. The attorney who will serve as principal trial counsel or who has the authority to act in this case, and has knowledge of all facets of it, must appear at the Conference. Counsel who fails to appear, who is late, or who sends an insufficiently authorized and knowledgeable substitute may be ordered to pay the expenses of the other attorneys.

Counsel and the parties are to advise the Court in the Case Management Plan whether it is advisable to hold the Scheduling Conference as scheduled in this Order or to postpone the conference until after the first notice of the status of settlement negotiations and discovery is due. (See the OPTIONS on Pages 1 and 2 of the Proposed Rule 16 Scheduling Order.)

1       **IT IS FURTHER ORDERED** that all parties are to conduct an initial **Case Management**  
2 **Meeting** at least fourteen days before the Scheduling Conference in accordance with Rule 26(f)  
3 of the Fed.R.Civ.P. to discuss:

4       A.       Possibility of consent to trial before a United States Magistrate Judge pursuant to 28  
5 U.S.C. §636(c); suitability for referral to this District's court-annexed voluntary arbitration  
6 program, to any other alternative dispute resolution mechanism, and/or reference to a master;

7       B.       Any matters relating to jurisdiction, venue or joinder of additional parties;

8       C.       The nature and bases of the claims and defenses and the possibilities for a prompt  
9 settlement or resolution of the case.

10      D.       Arrangements for Initial Disclosures in compliance with Rule 26(a)(1) of the  
11 Fed.R.Civ.P. Unless otherwise stipulated in writing by the parties or otherwise directed by a  
12 written Order of this court, Initial Disclosures shall be made at the initial Rule 26(f) Case  
13 Management Meeting or within ten (10) days after the meeting. The parties shall file with the  
14 Clerk of the Court a Notice of Initial Disclosure, rather than copies of the actual disclosures;

15      E.       A schedule of all pretrial proceedings, including evidentiary hearings pursuant to  
16 Daubert and/or Fed.R.Evid. 702, a trial date, an estimate of the length of trial, and any suggestions  
17 for shortening the trial;

18      F.       The subjects on which discovery may be needed, when discovery should be completed,  
19 and whether discovery should be conducted in phases or be limited to or focused upon particular  
20 issues;

21      G.       Whether any party desires a settlement conference before a judicial officer, or to  
22 participate in any other alternative dispute resolution forum;

23      H.       Whether counsel prefer to defer the Scheduling Conference as set forth by this Order  
24 until after the first notice of the status of settlement negotiations and discovery is due. (See the  
25 OPTIONS on Pages 1 and 2 of Proposed Rule 16 Scheduling Order); and

26      I.       Any other matters which counsel may feel will help dispose of the matter in an  
27 efficient and economical manner.

28       **IT IS FURTHER ORDERED:**

1 At the Rule 26(f) Case Management Meeting, the parties shall develop a **Proposed Case**  
2 **Management Plan**. This Plan shall be filed with the Court, not less than ten days before the  
3 Scheduling Conference and shall include individually numbered brief statements indicating:

4 1. The nature of the case, including the factual and legal basis of plaintiff's claims and  
5 defendant's defenses;

6 2. A list of the elements of proof necessary for each count of the Complaint and each  
7 Affirmative Defense and, if applicable, each Counterclaim. For those claims in which the burden  
8 of proof shifts, each party shall list the elements that the party must prove in order to prevail. The  
9 list of the elements of proof must contain citations to relevant legal authority (i.e., United States  
10 statutory and/or administrative law, U.S. Supreme Court cases, Ninth Circuit Court of Appeals  
11 case law, Arizona State case and statutory law, and other authority as dictated by the conflict of  
12 law rules);

13 3. The factual and legal issues genuinely in dispute, and whether they can be narrowed  
14 by stipulation or motion;

15 4. The jurisdictional basis of the case, citing specific statutes;

16 5. Parties, if any, which have not been served, as well as parties which have not filed an  
17 answer or other appearance. Unless counsel can otherwise show cause, the **Proposed Case**  
18 **Management Plan** shall be accompanied by a proposed order dismissing any party which has not  
19 been served, or appropriate pleadings seeking default judgment against any non-appearing party.

20 6. The names of parties not subject to the Court's jurisdiction;

21 7. Whether there are further dispositive or partially dispositive issues to be decided by  
22 pretrial motions and hearings including evidentiary hearings pursuant to Daubert and/or Fed.R.  
23 Evid. 702;

24 8. Whether the case is suitable for reference to arbitration, to a master, and/or to a  
25 United States Magistrate Judge for all further proceedings;

26 9. The status of related cases pending before other judges of this Court or before other  
27 courts;

1        10.        Suggested changes, if necessary, in the timing, form, or requirement for disclosure  
2 under Rule 26(a), Fed.R.Civ.P., including a statement of when initial disclosures were made or  
3 will be made in accordance with Paragraph "D" on Page 3 of this Order;

4        11.        Suggested changes, if any, in the limitations on discovery imposed by Fed.R.Civ.P. 30,  
5 31 and 33;

6        12.        The scope of discovery, the date discovery should be completed, and whether  
7 discovery should be conducted in phases or should be limited to or focused upon particular  
8 issues. For example, when potentially dispositive motions will be filed (e.g. motions for  
9 summary judgment or motions asserting a defense such as the statute of limitations) counsel  
10 should consider limiting discovery to the issue to be addressed in the motion until the Court has  
11 ruled on it;

12        13.        The final date for supplementation of discovery is to be set two to three weeks after  
13 the close of formal discovery. Counsel are reminded of the duty pursuant to Fed.R.Civ.P. 26(e)  
14 to supplement all Rule 26(a) disclosures and responses to discovery requests before the date for  
15 close of discovery or on the final date for supplementing discovery. Under no circumstances will  
16 the final date for supplementation occur after the date for filing dispositive motions. Fed.R.Civ.P.  
17 26(a)(3) disclosures of witnesses and exhibits which may be offered at trial must be disclosed  
18 before the close of discovery or, if agreed, on the final date for supplementation. This order  
19 governs and supersedes the "30 days before trial" disclosure deadline contained in Fed.R.Civ.P  
20 26(a)(3). Therefore, (1) failure to timely supplement Rule 26(a) disclosure, including the  
21 witnesses and exhibits for trial, (2) failure to timely supplement responses to any valid discovery  
22 request, and (3) attempts to include witnesses or exhibits in the Proposed Final Pretrial Order that  
23 were not previously disclosed in a timely manner may result in the exclusion of such evidence  
24 at trial or the imposition of other sanctions pursuant to Fed.R.Civ.P. 37, the Local Rules of the  
25 District Court, and the inherent power of the Court.

26        14.        In addition to the deadlines mentioned above, the proposed deadlines for:

27                (a) disclosure of experts and testimony under Rule 26(a)(2) of the Fed.R.Civ.P.;

28                (b) filing dispositive motions;

1 and

2 (c) lodging the **Joint Proposed Pretrial Order**.

3 All deadlines must be included, using the attached form of **Scheduling Order**, as a guideline  
4 in preparing the **Proposed Case Management Plan**. If counsel cannot agree on deadlines,  
5 separate orders may be submitted for discussion at the Scheduling Conference.

6 15. Estimated date the case will be ready for trial, the estimated length of trial, and any  
7 suggestions for shortening the trial;

8 16. Whether a jury trial has been requested.

9 17. The prospects for settlement, including any request for a settlement conference  
10 before another United States District Court Judge or Magistrate Judge, or other request of the  
11 Court for assistance in settlement efforts;

12 18. In class actions, the proposed dates for class certification proceedings and other class  
13 management issues. Such certification will result in the case being reassigned to the **complex**  
14 **track** for case management purposes;

15 19. Whether any unusual, difficult, or complex problems or issues exist which would  
16 require that this case be placed on the **complex track** for case management purposes; and

17 20. Any other matters which counsel believe will aid the Court in resolving this dispute  
18 in a just, speedy, and inexpensive manner.

19 After the conference, the Court will enter a **Scheduling Order**, which shall control the course  
20 of the action. To the extent that the Court's **Scheduling Order** differs from the parties'  
21 **Proposed Case Management Plan**, the provisions of the Court's Order shall control the course  
22 of this action unless modified by subsequent Order of this Court. Counsel are cautioned that the  
23 deadlines established at this Conference shall be enforced.

24 **IT IS FURTHER ORDERED THAT:**

25 It is the responsibility of plaintiff's counsel to initiate the communication necessary to  
26 schedule the initial **Case Management Meeting** and to prepare the **Proposed Case**  
27 **Management Plan**.

28 **IT IS FURTHER ORDERED THAT:**

1 The referenced documents/orders shall be obtained on this Court's website at  
2 www.azd.uscourts.gov.

3 This Court views the Scheduling Conference as critical to its case management responsibilities  
4 and the responsibilities of the parties under Rule 1, Fed.R.Civ.P.

5 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

6  
7  
8 \_\_\_\_\_  
9 Roslyn O. Silver  
United States District Judge

10 copies to all counsel of record  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28